The Runaway Verdict

By Mark Cooney

Bailiff: Calling People versus Rambling.

Judge: Ladies and gentlemen of the jury, the defendant, I. M. Rambling, Esquire, has been charged with violating section 7 of the Clear Legal-Writing Code, which prohibits "willfully or recklessly writing unreasonably long sentences." Counsel, your opening statements, please.

Prosecutor: Thank you, your honor. Ladies and gentlemen of the jury, this is an open-and-shut case. During this trial, you'll hear testimony from innocent readers—including a prominent judge—who were victimized by the defendant's rambling, run-on sentences. They'll tell you that while reading one of the defendant's briefs, they were forced to read dozens of sentences that were almost impossible to follow. And the sheer number of unreasonably long sentences shows that this was no accident. It was nothing short of recklessness—unforgivable behavior showing a shocking lack of concern for the reader. Ladies and gentlemen, you must convict. Thank you.

Defense counsel: Well, well, well, ladies and gentlemen, it sounds to me like this is a garden-variety case of workers whining about doing their jobs. These workers just happen to be a fancy-pants judge and his fancy little clerks. But judges and their clerks are paid—*your* hard-earned tax dollars, ladies and gentlemen—to read legal briefs. So what if a sentence is a little on the long side? Just because one judge and a few clerks say that they had to read something twice doesn't make it unreasonable. Maybe they just need longer attention spans! When you hear the testimony, you'll see that this is a bunch of nonsense. My client, Mr. Rambling, is a highly reputable attorney—an officer of the court and a pillar of the community. Reject this charge, and let him get back to his noble work. Thank you.

Prosecutor: Your honor, the people call the Honorable Benjamin Wendell Reed. [The witness is sworn in and states his name.] Judge Reed, I'm handing you a 19-page document that the parties have stipulated is the defendant's brief from the *Smith* case. What happened when you and your clerks read this brief?

Witness: Well, my research clerk started pulling her hair so hard that a few clumps actually came out, and then a junior clerk started to twitch and convulse. So I picked up the brief and started reading it, and I got to a sentence on the first page that went on for about 120 words. I couldn't make heads or tails of it. And the long, run-on sentences just kept on coming, page after page.

Prosecutor: And how did that make you feel?

Judge: Frustrated. It's hard enough reading 15- or 20-page briefs day after day. But when you have to struggle and reread portions of them, it just wears you down. We may be judges and court staff, but we're still human.

Prosecutor: Will you please read aloud the first troublesome sentence you encountered?

Defense counsel: Your honor, I object under MRE 403. The sentence the witness is about to read is gruesome and highly disturbing, and upon hearing or reading it, the jury will be unfairly prejudiced against my client.

Judge: Will counsel please approach.

[Counsel walk to the bench.]

Judge [whispering]: Mr. Defense Counsel, isn't that objection tantamount to admitting the crime?

Defense counsel: Tanta wha?

Judge: I'm saying, by objecting because the sentence is so disgusting and gruesome, haven't you admitted an element of the crime: that it's an awful, unreasonably long sentence?

Defense counsel [looking sheepish]: I… I suppose so. Thank you, your honor.

[Counsel return to their tables.]

Defense counsel [in a barely audible mumble]: Objection withdrawn.

Judge: The witness may answer.

"Plain Language" is a regular feature of the *Michigan Bar Journal,* edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. Contact Prof. Kimble at kimblej@cooley.edu. For a list of previous articles, go to www.michbar.org/generalinfo/plainenglish/columns.cfm. 2009 is a notable year for the column.

While reading one of the defendant's briefs, they were forced to read dozens of sentences that were almost impossible to follow.

Witness: Here's the first sentence that troubled me:

> It does not matter whether this Court deems same as tortious interference with business (which is clearly supported by the pleadings and which can be specifically enhanced or identified through discovery) which is set forth in the pleadings and which unquestionably satisfies the requirements set forth within *Strickland* or an intentional misrepresentation (the defendant argues the sole point of who it was made to and/or who was injured, but they are in no position to argue that they did not make a material misrepresentation) since pleadings are to be liberally construed, until there is further discovery, including depositions, the court should not rush to act, as can be seen, a dismissal will permit the defendant to close discovery doors that they have opened through their reckless and unwarranted conduct.[1]

[Juror #2 faints.]

Judge: Bailiff! Please attend to Juror #2. Water! Someone bring water—

Juror #6 [rushing to Juror #2's aid]: Stand back! I'm a doctor.

Witness: And that wasn't even the worst of it. How about this one…

Defense counsel: Objection! Your honor, any more evidence along these lines should be excluded because it's…it's…cumulative. Yeah, that's it. It's cumulative and confusing!

Prosecutor: Your honor, reserving the right to recall this witness, the people will be happy to move on and call expert grammarian Albert J. Colon. [The witness is sworn in and states his name.]

Prosecutor: Mr. Colon, is the sentence that the previous witness read a run-on sentence?

Witness: Oh, yes. It's a classic run-on. This so-called sentence actually contained multiple independent clauses and…

Prosecutor: Plain English, sir, if you please.

Witness: Goodness me, yes. Sorry. Let me take a step back. A clause is simply a group of words with a subject and a verb—the building blocks of a sentence. When a clause expresses a complete idea that can stand on its own, it's called an independent clause. So the phrase *independent clause* is really just a fancy way of saying a complete sentence.

Prosecutor: I see. Please continue.

Witness: Most people refer to any long, meandering sentence as a "run-on sentence." But the technical definition of a run-on is when independent clauses are fused together without any punctuation at all.[2] Other times, careless writers combine independent clauses with nothing but a comma, and that's called a "comma splice."[3] Either scenario can cause readers to do a double-take, and Mr. Rambling's sentence does both. It actually contains three independent clauses thrown together with no punctuation at all or with just a comma. And there's a fourth independent clause within parentheses.

Prosecutor: So you're saying that the defendant's long sentence actually contained three or four sentences?

Witness: Yes, not to mention a whole bunch of subordinate clauses, meaning clauses that can't stand alone as complete sentences. But even if a sentence doesn't meet the technical definition of a run-on sentence or a comma splice, that doesn't mean it's not too long. Legal writers should prefer short sentences. Not all short, of course—length should vary—but short on average. The more information writers cram into a sentence, the harder it is for their readers. And readers in this profession are, by definition, very busy people reading about very complex things.

Prosecutor: Your witness.

Defense counsel: Isn't it true, sir, that you can't name a single judge who has expressed concerns about sentence length other than Judge Reed here today?

Witness: Actually, a few jump to mind right away. Ohio Court of Appeals Judge Mark Painter's book on legal writing includes a chapter titled "Write Short Sentences."[4] After noting that the period is "the most underused punctuation mark in legal writing," Judge Painter recommends an average of 18 words a sentence.[5] And Michigan Court of Appeals Judge William Whitbeck wrote an article advising lawyers to "use short, declarative sentences" averaging

less than 20 words a sentence.[6] I could easily find more judges, but those two jump to mind right away.

Defense counsel [beginning to sweat noticeably]: Uh…I see…And I'm sure that those judges meant well, sir. But they don't have time to study all this esoteric mumbo-jumbo for a living, now do they? I mean, can you tell the jury with certainty that litigation experts or members of the legal-writing academy share your concerns about [in a tone of mocking disbelief] *long sentences?*

Witness: Oh, yes. Richard Wydick's *Plain English for Lawyers* contains a chapter called "Use Short Sentences,"[7] in which he notes that "[l]ong sentences make legal writing hard to understand."[8] Likewise, in his popular *McElhaney on Litigation* column, Jim McElhaney advised litigators to—and I quote—"[g]et rid of compound sentences" because they "get in the way of instant understanding."[9] He added that "[o]ne good idea per sentence is enough."[10] And legal-writing expert Wayne Schiess recently authored an article on consumer drafting that emphasized the importance of short sentences.[11] He cited no fewer than 10 other legal-writing experts who have emphasized the same thing.[12] Even the readability statistics for word-processing software emphasize sentence length as an important factor for readability. You look a bit pale, sir. Should I continue?

Defense counsel: Uhhh…no…no, I don't think that's necessary. But I note that you haven't offered any alternative to my client's version of the sentence that Judge Reed complained about. So it's not so easy to fix, is it?

Witness: Good writing and editing is challenging work. It's never easy. But the most obvious step would be to turn the four independent clauses in Mr. Rambling's long sentence into just what they are: four separate sentences. And with more edits, I'll bet we'd end up with seven or eight short sentences. It's a bit hard to figure out exactly what Mr. Rambling was getting at, but here's how it might look with some edits:

> It makes no difference whether the Court considers the defendant's conduct tortious interference or intentional misrepresentation. Both theories are viable. The tortious-interference count satisfies the *Strickland* requirements, and further discovery may reveal more evidence supporting that claim. The misrepresentation count also withstands scrutiny. The defendant has not denied making a material misrepresentation. It argues only about who was injured by that misrepresentation. Because the Court must liberally construe the plaintiff's pleadings, and because discovery could produce more evidence supporting these theories, the Court should deny the defendant's motion to dismiss.

Juror #7: Ooh! That's much easier to understand!

Judge: Order! Order! It is indeed easier, but I must ask the jurors to refrain from…

Juror #1: Can we just move on to sentencing? We should impose a long sentence! Get it?

Judge: Really, sir, please—

Defendant: OKAY, OKAY. I CONFESS! It's true. Aside from trying to persuade readers, I never really thought much about them. I never worried about how easy it was to read my briefs. I just tried to make my argument and make my deadline. But I'm reformed! I swear, I'll think about my readers from now on. I'll edit my drafts. I'll write shorter sentences. I'll use periods. Just give me one more chance. Even Scrooge got a second chance! [sobbing, with head in hands]

Defense counsel: Motion to strike, your honor. ■

Mark Cooney is an associate professor at Thomas M. Cooley Law School. He teaches legal research and writing at the school's Auburn Hills campus. Before joining the Cooley faculty, he spent 10 years in private practice, most recently with Collins, Einhorn, Farrell & Ulanoff, P.C., in Southfield, where he concentrated on civil appeals.

FOOTNOTES

1. This example was inspired by an actual sentence in Globe Electric Supply Company's "Response to Motion to Dismiss Counterclaim" in *Square D Co v Scott Electric Co*, unpublished opinion of the United States District Court for the Western District of Pennsylvania, issued July 15, 2008 (Docket No. 06-00459) (find at 2008 WL 2779067).
2. Garner, *A Dictionary of Modern Legal Usage* (Oxford Univ Press, 2d ed, 1995), p 777.
3. *Id.*
4. Painter, *The Legal Writer—40 Rules for the Art of Legal Writing* (Casemaker Print Pub, 3d ed, 2005), p 66.
5. *Id.*
6. Whitbeck, *Writing to win at the Court of Appeals*, 85 Mich B J 20, 23 (July 2006).
7. Wydick, *Plain English for Lawyers* (Carolina Academic Press, 5th ed, 2005), p 33.
8. *Id.*, p 34.
9. McElhaney, *Style Matters*, 94 ABA J 28, 28–29 (June 2008).
10. *Id.*, pp 28–29.
11. Schiess, *The art of consumer drafting*, 11 Scribes J Legal Writing 1, 3–5 (2007).
12. *Id.*